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No. 85-29

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

EWP CORPORATION and
LA SOCIETE TREFILUNION,
Petitioners,

v.

RELIANCE UNIVERSAL INC., and
EXPOSAIC INDUSTRIES, INC.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

RESPONDENTS' BRIEF IN OPPOSITION

JOHN D. NIES
LEBLANC, NOLAN, SHUR & NIES
1911 Jefferson Davis Highway
Arlington, Virginia 22202
(703) 521-6590
Counsel for Respondents

Of Counsel:

LEBLANC, NOLAN, SHUR & NIES
1911 Jefferson Davis Highway
Arlington, Virginia 22202
(703) 521-6590

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents, Reliance Universal, Inc. and Exposaic Industries, Inc. pray that the Petition of EWP Corporation and La Societe Trefilunion for Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Federal Circuit entered on February 21, 1985 be denied, on the ground that there are no "special and important reasons therefor".

Petitioner's statement under Rules 21.1(b) and 28.1 is correct.

STATEMENT OF THE CASE

It appears from the detailed fact statement petitioners have presented to the Court that petitioners are importuning this Court to review the case *de novo*. Respondents do not propose to follow petitioners' lead. Respondents see no purpose in a discussion of the facts. Instead, respondents will present their comments on the "QUESTIONS PRESENTED" which presumably represent the distilled essence of respondents' position.

QUESTION 1

Is the Court of Appeals for the Federal Circuit subject to the constraints of the clearly erroneous stricture of F.R.C.P. 52(a)?

Of course—and the Court itself has said so time and again. See the authorities cited at pages 9 and 10 of the petition.

QUESTION 2

Does a conflict between two panels of the Court of Appeals for the Federal Circuit fall within Rule 17?

The answer to this question can be left for another day for there is no conflict.

QUESTION 3

Is is permissible for the Court of Appeals for the Federal Circuit to reverse a District Court without disturbing any finding of fact?

Of course. It is perhaps the primary function of appellate review to correct errors of law, i.e. as stated

by the Court in the case at bar, to correct errors of the lower court's "approach".

QUESTION 4

Is the Court of Appeals for the Federal Circuit free to disregard the statutory presumption of patent validity afforded by 35 USC §282?

Of course not. The Court of Appeals for the Federal Circuit in fact has performed a service of vast importance to the patent bar in clarification of the role and application of 35 USC §282 and imparting stability to its application. Notable examples are found in *Medtronic, Inc.* v. *Cardiac Pacemakers,* 721 F 2d 563 (CAFC 1983) and *Railroad Dynamics, Inc.* v. *A. Stucki Co.,* 727 F 2d 1506 (CAFC 1984).

QUESTION 5

Did the Court of Appeals for the Federal Circuit substitute its own "speculative rationalizations" for the District Court's findings of fact?

No. Perhaps the best answer to this question is found in the portion of the opinion of the court below reproduced at pages A-11 through A-15 of the appendix to the petition.

CONCLUSION

The petition seeks review of a routine patent case. Despite its unquestioned importance to the litigants, the decision below breaks no new legal ground, departs from no established principles and is wholly

lacking in any issue which would call into play the time and resources of this Court.

Respectfully submitted,

JOHN D. NIES

LEBLANC, NOLAN, SHUR & NIES
1911 Jefferson Davis Highway
Arlington, Virginia 22202
(703) 521-6590

Counsel for Respondents

Of Counsel:

LEBLANC, NOLAN, SHUR & NIES
1911 Jefferson Davis Highway
Arlington, Virginia 22202
(703) 521-6590